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Attorneys for Plaintiff DAYCO INDUSTRIES, LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DAYCO INDUSTRIES, LLC, a Minnesota  
limited liability company

Plaintiff,

vs.

REGG INSPECTION CORP., a domestic  
profit corporation; REGG ROLLING, a  
foreign corporation; and DOES 1-10,  
inclusive,

Defendant.

Case No.

**COMPLAINT FOR**

- 1. BREACH OF CONTRACT**
- 2. BREACH OF IMPLIED  
WARRANTY OF  
MERCHANTABILITY**
- 3. BREACH OF THE IMPLIED  
WARRANTY OF FITNESS FOR  
A PARTICULAR PURPOSE**
- 4. BREACH OF EXPRESS  
WARRANTY**

**DEMAND FOR JURY TRIAL**

1 Plaintiff DAYCO INDUSTRIES, LLC (“Plaintiff” or “Dayco”), by and through  
2 its attorneys, brings this Complaint against Defendants REGG ROLLING and REGG  
3 INSPECTION CORP. (collectively “Defendants”) and hereby alleges as follows:

4 **NATURE OF ACTION**

5 1. This is an action brought by Plaintiff, a leading metals distributor  
6 representing a global network of primary mills and secondary manufacturers, against  
7 Defendants for providing a defective high fin rolling machine (model 3R400HD PLC)  
8 (“Machine”) and also failing to reimburse Plaintiff the full cost of the defective machine  
9 along with other incidental damages in the amount of \$869,114.00. Plaintiff entered into  
10 a purchase agreement (“Agreement”) with Defendants to purchase the Machine on or  
11 about January 5, 2021. (“**Exhibit A**”). After taking delivery of the Machine on or about  
12 February, 2021, Plaintiff noticed that the Machine was failing to perform and produce  
13 high fin tubing in accordance with the specifications outlined in the Agreement.

14 2. Plaintiff engaged in numerous correspondence with Defendants for well  
15 over two years relating to the nonperformance of the Machine. Not only are Defendants  
16 in breach of numerous express and implied warranties, Defendants are also in breach of  
17 the contract entered into with Plaintiff for the purchase of the Machine by providing a  
18 defective Machine to Plaintiff along with failing to reimburse Plaintiff the cost of the  
19 defective Machine. By this Complaint, Plaintiff seeks damages, and other remedies  
20 provided for by law to remedy injuries caused by Defendants and DOES 1 through 10  
21 for claims of breach of contract, breach of the implied warranty of merchantability,  
22 breach of the implied warranty of fitness for a particular purpose, and breach of express  
23 warranty.

24 **PARTIES**

25 3. Plaintiff is and was at all times mentioned in this Complaint is a limited  
26 liability company organized and existing under the laws of Minnesota, and doing  
27 business in California, with its principal place of business located in Mira Loma,  
28 California. Plaintiff is owned by three separate S-Corporations with the first organized

1 in Minnesota and doing business in California, the second organized and doing business  
2 in Iowa, and the third organized in Iowa and doing business in Illinois. Therefore,  
3 Plaintiff is a citizen of the states of California, Iowa, and Illinois for diversity  
4 jurisdiction purposes.

5 4. Defendant REGG ROLLING was and at all times mentioned in this  
6 Complaint is a foreign corporation organized and existing under the laws of Italy, with a  
7 principal place of business located in Italy.

8 5. Defendant REGG INSPECTION CORP. was and at all times mentioned in  
9 this Complaint is a domestic profit corporation organized and existing under the laws of  
10 Michigan with its principal place of business also in Michigan.

11 6. Plaintiff is ignorant of the true names and capacities of defendants sued as  
12 DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names.  
13 Plaintiff is informed and believes, and on the basis of that information and belief  
14 alleges, that at all times mentioned in this Complaint, DOES 1-10 were the agents and  
15 employees of their co-defendants or otherwise responsible for the conduct complained  
16 of herein, and in doing the things alleged in this Complaint were acting within the  
17 course and scope of that agency and employment or were otherwise responsible for the  
18 damages complained of by Plaintiff. Plaintiff will amend this Complaint to allege its  
19 true names and capacities when ascertained.

#### 20 **JURISDICTION AND VENUE**

21 7. The Court has original jurisdiction in this action under 28 U.S.C. § 1332,  
22 in that there is complete diversity between Plaintiff and Defendants, and the amount in  
23 controversy exceeds \$75,000.00, exclusive of interest and costs.

24 8. Venue is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of  
25 the events or omissions giving rise to the claim occurred in this District. Defendants  
26 have also acknowledged that venue would be proper in California because that is where  
27 the Machine was delivered and the underlying transaction took place.

28 ///

1 9. Defendants are subject to personal jurisdiction in this district under Federal  
2 Rules of Civil Procedure Rule 4(k)(1)(A) and California Code of Civil Procedure  
3 section 410.10.

4 **ALTER EGO ALLEGATIONS**

5 10. At all relevant times, as alleged more fully herein, each Defendant acted as  
6 an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other  
7 Defendants, and in doing the things alleged herein acted within the course and scope of  
8 such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of  
9 the Defendant's acts alleged herein was done with the permission and consent of each  
10 of the other Defendants.

11 11. At all times relevant hereto, Defendant Regg Rolling is the alter ego of  
12 Defendant Regg Inspection Corp., and there exists, and at all times herein mentioned  
13 has existed, a unity of interest and ownership between Defendants such that any  
14 separateness between them has ceased to exist in that Defendant Regg Inspection Corp.  
15 completely controlled, dominated, managed, and operated the other Defendants to suit  
16 its convenience.

17 12. At all times relevant thereto, Defendant Regg Rolling was not only  
18 influenced and governed by Defendant Regg Inspection Corp., but there was such a  
19 unity of interest and ownership that the individuality, or separateness, of Regg Rolling  
20 and Regg Inspection Corp. has ceased, and that the facts are such that an adherence to  
21 the fiction of the separate existence of these entities would, under the particular  
22 circumstances, sanction a fraud or promote injustice.

23 13. Plaintiff is informed and believes that at all relevant times mentioned  
24 herein, the acts of the business entities involved were performed by an employee, agent,  
25 officer, servant and/or representative of Regg Inspection Corp. and Regg Rolling.

26 **FACTUAL ALLEGATIONS**

27 14. Since 1997, Plaintiff has been a leading metals distributor representing a  
28 global network of primary mills and secondary manufacturers that provides stainless

1 steel and aluminum parts for the aftermarket automotive, bath and shower, pool and spa,  
2 and plumbing industries. Plaintiff partners with world class manufacturers around the  
3 world to be among the first to establish internationally sourced, just-in-time delivery  
4 capabilities.

5 15. Defendants design and manufacture inspections systems with modular  
6 design. The machines manufactured by Defendants can be equipped with vision  
7 systems, mechanical recess control, 360 degree profile check, eddy current crack  
8 detection, hardness control, and other special applications. Defendants also manufacture  
9 machinery capable of producing high-fin tubing. Defendants employ a service center  
10 with technicians based in all major markets to support the machinery it sells.

11 16. On or about January 5, 2021, Plaintiff entered into the Agreement to  
12 purchase the Machine from Defendants in order to manufacture high fin tubing.  
13 Plaintiff took delivery of the Machine on or about February, 2021. In order to pay for  
14 the Machine, Plaintiff entered into a loan agreement with Bank of America.

15 17. The Agreement states that the Machine “must show repeatability which  
16 means it must run a consistent batch of 50 pcs without change of dimensions to the  
17 finished part. This also needs to be accomplished on fully automatic mode, 50 pcs  
18 loaded and run without interruption.” (See **Exhibit A**). The Agreement also states that  
19 “upon failure of testing Dayco reserves the right to return the machine for full credit.”  
20 *Id.*

21 18. However, despite repeated efforts by Defendants with assistance and  
22 cooperation from Plaintiff and its personnel, Plaintiff quickly began to realize that the  
23 Machine was not working in accordance with expectations and subsequently failed to  
24 produce tubing that met the specifications outlined in the Agreement.

25 19. On or about July 15, 2021, Plaintiff sent Defendants an e-mail regarding  
26 the repeated nonperformance of the Machine in which Plaintiff described the various  
27 defects related to both the proper functioning of the machine, including but not limited  
28 to, the failure to run more than 2 parts without dimension changes, tube stoppages and

1 being gouged, as well as the failure to produce tubes in accordance with the  
2 specifications outlined in the Agreement.

3 20. Plaintiff continued to complain of the Machine's defective performance for  
4 well over two years in which it became clear that the Machine was not capable of  
5 performing to the minimum specified standard and consistently failed all related testing.

6 21. On or about November 13, 2023, Plaintiff sent a letter to Defendants to  
7 exercise its right under the Agreement to return the Machine for reimbursement that  
8 included the full price of the Machine as well as all tooling paid for by Plaintiff which  
9 totaled \$805,705.08.

10 22. On or about November 20, 2023, Defendants sent a letter to Plaintiff  
11 containing numerous inaccuracies and misstatements regarding two-years' worth of  
12 issues involving the Machine that included stating that the coolant and a lack of material  
13 was contributing to the Machine being unable to produce ten tubes in automatic, the  
14 tooling was outside the scope of the Agreement, and that the Machine successfully  
15 rolled ten consecutive tubes that met the specifications outlined in the agreement.

16 23. On or about November 29, 2023, Plaintiff sent a letter responding to the  
17 many misstatements and characterizations made by Defendants in the November 20,  
18 2023 letter. Within the November 29, 2023 letter, Plaintiff communicated that the  
19 Machine was unable to run ten consecutive tubes in automatic along with failing to  
20 produce tubes that met specifications outlined in the Agreement and that production of  
21 the requisite tubes was not hindered by a lack of materials. Plaintiff also communicated  
22 that Defendants bore responsibility for the tooling for the Machine pursuant to the  
23 Agreement.

24 24. Among the issues Plaintiff raised in the November 29, 2023 letter was  
25 related to tendering the final payment for the Machine by Plaintiff to Defendants. In the  
26 November 20, 2023 letter sent by Defendants, Defendants stated that Plaintiff tendered  
27 full payment for the Machine because Plaintiff recognized that the Machine was  
28 meeting the performance requirements specified in the Agreement.

1           25. However, in reality, Plaintiff tendered full payment because the standard  
2 for payment as specified in the Agreement had been met. The standard specified in the  
3 Agreement required that final payment would be due once the Machine was installed,  
4 running and produced any one of the three parts to print tolerances. Plaintiff  
5 acknowledged that the Machine produced one of the single tubes to print tolerance, and  
6 as a result performed its contractual obligation by tendering the final payment. Notably,  
7 Plaintiff's final payment was made notwithstanding the fact that the Machine was not  
8 able to produce ten consecutive specification compliant tubes in automatic without  
9 interruption, let alone the required fifty.

10           26. In an effort to distort reality and shift responsibility for breaching the  
11 Agreement, Defendants also claimed that the emails that were included with its  
12 November 20, 2023 letter purported to confirm that Plaintiff had assumed responsibility  
13 for the tooling. However, the emails included were from February and June of 2018  
14 whereas the Agreement was dated January 5, 2021. Additionally, Defendants tried to  
15 use Plaintiff's attempts to suggest alternate designs that could help with the proper  
16 functioning of the Machine as a sign that Plaintiff were assuming full responsibility for  
17 the tooling.

18           27. On information and belief, Plaintiff entered into the Agreement and made  
19 the financial investment of \$805,705.08 to have a fully functioning machine that would  
20 produce high fin tubing according to specifications which would require both the  
21 Machine and the tooling. To crystallize this understanding, the Machine and the tooling  
22 were both included in the Agreement. (*See Exhibit A*).

23           28. Ultimately, the Machine never performed according to expectations. In  
24 fact, even Defendants' service engineer was unable to run more than one tube at a time  
25 and after each tube had to make adjustments to the Machine. Even the tubes that were  
26 ultimately produced contained deficiencies such as ruptures. Additionally, during the  
27 operation of the Machine, a number of the tooling broke which further indicated the  
28 faulty nature of the Machine.



1           29. In its November 29, 2023 letter, after recognizing the continued  
2 nonperformance of the Machine, Plaintiff requested a reimbursement for the payments  
3 made to Defendants for the Machine in the amount of \$805,705.08. Plaintiff also  
4 requested that Defendants assume the cost of removing and shipping the defective  
5 Machine along with the remaining tooling.

6           30. On or about December 20, 2023, Defendants responded and declined  
7 Plaintiff's requests by proposing that a US service engineer would provide remote or  
8 on-site support along with extra tooling to reach the target which (after two years of  
9 nonperformance) Defendants described as being "close." If the proposal was successful,  
10 Defendants requested that Plaintiff pay the full open invoice including the additional  
11 remote and on-site support provided by the US service engineer. Defendants also  
12 proposed that it would support Plaintiff in promoting the sales of the Machine for the  
13 next eight months but all costs would be Plaintiff's to bear.

14           31. In response to Defendants' proposals, Plaintiff attempted to avoid judicial  
15 intervention one final time and offered Defendants the opportunity to sell the Machine  
16 to another party with the entire purchase price being paid to Plaintiff and any excess  
17 going to Defendants. If the purchase price was less than the \$805,705.08, the shortfall  
18 would be divided equally between Plaintiff and Defendants. In an effort to facilitate  
19 resolution, Plaintiff even offered to house the Machine in its facility for a certain  
20 amount of time until it was sold. If the Machine was not sold, then Plaintiff would be  
21 entitled to reimbursement of the \$805,705.08 amount.

22           32. On or about August 3, 2024, Defendants informed Plaintiff that they also  
23 refuse to buy back the defective Machine and claimed that Plaintiff had informed  
24 Defendants that Plaintiff possessed "specific expertise in both extrusion disc design and  
25 production operation" and would provide specialists. Defendant also claimed they  
26 would not have produced the Machine without Plaintiff's assurances. However, Plaintiff  
27 never made any such misrepresentation to Defendant and relied on Defendant's  
28



1 expertise to produce a functional product that would not work according to  
2 specifications even when Defendants' own engineers were present.

3 33. On information and belief, Defendants have failed to reimburse Plaintiff  
4 the \$805,705.08 for the defective Machine that has failed to perform in accordance with  
5 expectations since Plaintiff first accepted delivery. Further, as a result of the loan  
6 agreement entered into with Bank of America to pay for the Machine, Plaintiff has  
7 accrued \$63,408.92 in interest that continues to accrue at the rate of 4.30%. Therefore,  
8 to date, Plaintiff has incurred \$869,114.00 in damages as a result of Defendants' breach  
9 of the Agreement as well as various implied and express warranties.

### 10 **FIRST CAUSE OF ACTION**

#### 11 **(Breach of Contract)**

12 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33  
13 as if fully set forth herein.

14 35. On or about January 5, 2021, Plaintiff entered into the Agreement to  
15 purchase the Machine from Defendants for \$805,705.08. (*See Exhibit A*). Plaintiff took  
16 delivery of the Machine on or about February, 2021. The Agreement specified that final  
17 payment by Plaintiff would be tendered once the Machine was installed, running, and  
18 produced one of three parts to print tolerances.

19 36. The Agreement contained specific requirements for the Machine to  
20 produce fifty specification compliant tubes. For example, The Agreement states that the  
21 Machine "must show repeatability which means it must run a consistent batch of 50 pcs  
22 without change of dimensions to the finished part. This also needs to be accomplished  
23 on fully automatic mode, 50 pcs loaded and run without interruption." *Id.* The  
24 Agreement also states that "upon failure of testing Dayco reserves the right to return the  
25 machine for full credit. The incoming mother tubes must meet the required print  
26 tolerances, specifically straightness, concentricity, dry and with the correct grain size."

27 *Id.*

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1           37. Since taking delivery of the Machine, Plaintiff realized that the Machine  
2 was not working in accordance with expectations and subsequently failed to produce  
3 tubes that met the required specifications outlined in the Agreement. For over two years  
4 following execution of the Agreement, Plaintiff communicated numerous defects to  
5 Defendants regarding the proper functioning of the Machine as early as July 15, 2021  
6 (shortly after accepting delivery) including but not limited to the failure to run more  
7 than 2 parts without dimension changes, tube stoppages and being gouged, as well as  
8 the failure to produce tubes in accordance with the specifications outlined in the  
9 Agreement. Even when the Machine would produce tubing, it would be defective or  
10 faulty in the form of ruptures to the tubing itself.

11           38. Plaintiff continued to complain of the Machine's defective performance for  
12 well over two years in which it became clear that the Machine was not capable of  
13 performing to the minimum specified standard and consistently failed all related testing.

14           39. In an attempt to explain the various deficiencies Plaintiff complained of,  
15 Defendants blamed a purported lack of materials even though a lack of material was  
16 never the reason behind the deficiencies in tubing production.

17           40. Plaintiff satisfied their obligations under the Agreement by tendering final  
18 payment since the Machine produced one of the single tubes to print tolerance. Notably,  
19 notwithstanding Plaintiff's final payment, the Machine was not able to produce ten  
20 consecutive specification compliant tubes without interruption let alone the fifty that  
21 were required by the Agreement.

22           41. Except as excused by the acts, breaches and omissions of Defendants,  
23 Plaintiff has performed all conditions, covenants and promises required by it to be  
24 performed in accordance with the terms and conditions of the Agreement.

25           42. Defendants breached the Agreement because the Machine failed to perform  
26 in accordance with expectations and subsequently failed to produce specification  
27 compliant tubing for over two years after the Agreement was executed.

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43. Despite multiple attempts by Plaintiff to resolve the breach amicably, Defendants refuse to remedy its breach.

44. As a result of Defendants' breach, Plaintiff not only spent substantial time and effort, but also paid for installation of specialized cooling equipment, electrical power, and infrastructure to accommodate the Machine. Additionally, Plaintiff also lost many opportunities to meet the demand of the market which has caused harm to Plaintiff's past and future earnings. Further, as a result of the loan agreement entered into with Bank of America to pay for the Machine, Plaintiff has accrued \$63,408.92 in interest that continues to accrue at the rate of 4.30%.

45. Plaintiff has been damaged in an amount to be determined at trial, and which exceeds, at a minimum, the sum of \$869,114.00. Plaintiff will set forth the full extent and nature of its damages at trial.

## **SECOND CAUSE OF ACTION**

### **(Breach of Implied Warranty of Merchantability)**

#### **(Cal. Comm. Code §2314)**

46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as if fully set forth herein.

47. Defendants are and at all relevant times was a merchant with respect to goods of the kind which it sold to Plaintiff.

48. As alleged above, the parties formed a contract through Plaintiff's execution of the Agreement on or about January 5, 2021, Defendants' delivery of the Machine and Plaintiff's subsequent acceptance thereof on or about February, 2021.

49. Plaintiff purchased the Machine from Defendants in order to manufacture high fin tubing in accordance with the specifications outlined in the Agreement.

50. Since acceptance of the delivery on or about February, 2021, Plaintiff realized that the Machine did not have the quality that it reasonably expected. For example, the Machine suffered from defects, including but not limited to, the failure to run more than 2 parts without dimension changes, tube stoppages and being gouged, as

1 well as the failure to produce tubes in accordance with the specifications outlined in the  
2 Agreement. Even when the Machine would produce tubing, it would be defective or  
3 faulty in the form of ruptures to the tubing itself.

4 51. Plaintiff performed its obligations under the Agreement at all times by,  
5 among other things, tendering final payment since the Machine produced one of the  
6 single tubes to print tolerance. Notwithstanding Plaintiff's final payment, the Machine  
7 was not able to produce ten consecutive specification compliant tubes without  
8 interruption let alone the fifty that were required by the Agreement.

9 52. Implied warranties of merchantability were therefore part of the contract  
10 formed between the parties.

11 53. Defendants breached the implied warranties of merchantability in that the  
12 defective Machine it sold and delivered to Plaintiff under the contract were not of fair,  
13 average quality within the contractual descriptions, could not pass without objection in  
14 the trade under the contractual description and were not fit for the ordinary purposes for  
15 which such goods were used. As a result of Defendants' breaches, Plaintiff did not  
16 receive goods as warranted by Defendants.

17 54. As a result of Defendants' breach of such implied warranties, Plaintiff not  
18 only spent substantial time and effort, but also paid for installation of specialized  
19 cooling equipment, electrical power, and infrastructure to accommodate the Machine.  
20 Additionally, Plaintiff also lost many opportunities to meet the demand of the market  
21 which has caused harm to Plaintiff's past and future earnings. Further, as a result of the  
22 loan agreement entered into with Bank of America to pay for the Machine, Plaintiff has  
23 accrued \$63,408.92 in interest that continues to accrue at the rate of 4.30%.

24 55. As a result of Defendants' breach of such implied warranties, Plaintiff has  
25 been damaged in an amount to be determined at trial, and which exceeds, at a minimum,  
26 the sum of \$869,114.00.

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**THIRD CAUSE OF ACTION**

**(Breach Of The Implied Warranty Of Fitness For A Particular Purpose)**

**(Cal. Comm. Code §2313)**

56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 as if fully set forth herein.

57. Defendants are and at all relevant times was a merchant with respect to goods of the kind which it sold to Plaintiff.

58. As alleged above, the parties formed a contract through Plaintiff's execution of the Agreement on or about January 5, 2021, Defendants' delivery of the Machine and Plaintiff's subsequent acceptance thereof on or about February, 2021.

59. As a Manufacturer of the kind of equipment needed to manufacture high fin tubing, Plaintiff relied on Defendants' expertise and representations as an elite manufacturer by agreeing to purchase the Machine from Defendants to produce tubing in accordance with the specifications outlined in the Agreement.

60. Defendants had knowledge that Plaintiff was entering into the Agreement to purchase the Machine to produce high fin tubing because the Agreement clearly stated that the Machine "must show repeatability which means it must run a consistent batch of 50 pcs without change of dimensions to the finished part. This also needs to be accomplished on fully automatic mode, 50 pcs loaded and run without interruption." (See **Exhibit A**).

61. Since acceptance of the delivery, Plaintiff realized that the Machine did not have the quality that it reasonably expected and were specified in the Agreement. For example, the Machine suffered from defects, including but not limited to, the failure to run more than 2 parts without dimension changes, tube stoppages and being gouged, as well as the failure to produce tubes in accordance with the specifications outlined in the Agreement. Even when the Machine would produce tubing, it would be defective or faulty in the form of ruptures to the tubing itself.

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62. Defendants breached the Implied Warranty of Fitness for a Particular Purpose in that the defective Machine it sold and delivered to Plaintiff under the contract were not of fair, average quality within the contractual descriptions, could not pass without objection in the trade under the contractual description and were not fit for the for the purpose of manufacturing high fin tubing in accordance with the specifications outlined in the Agreement. As a result of Defendants' breaches, Plaintiff did not receive goods as warranted by Defendants.

63. As a result of Defendants' breach of the Implied Warranty of Fitness for a Particular Purpose, Plaintiff not only spent substantial time and effort, but also paid for installation of specialized cooling equipment, electrical power, and infrastructure to accommodate the Machine. Additionally, Plaintiff also lost many opportunities to meet the demand of the market which has caused harm to Plaintiff's past and future earnings. Further, as a result of the loan agreement entered into with Bank of America to pay for the Machine, Plaintiff has accrued \$63,408.92 in interest that continues to accrue at the rate of 4.30%.

64. As a result of Defendants' breach of such implied warranties, Plaintiff has been damaged in an amount to be determined at trial, and which exceeds, at a minimum, the sum of \$869,114.00.

#### **FOURTH CAUSE OF ACTION**

##### **(Breach of Express Warranty)**

##### **(Cal. Comm. Code §2315)**

65. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 64 as if fully set forth herein.

66. Defendants are and at all relevant times was a merchant with respect to goods of the kind which it sold to Plaintiff.

67. As alleged above, the parties formed a contract through Plaintiff's execution of the Agreement on or about January 5, 2021, Defendants' delivery of the Machine and Plaintiff's subsequent acceptance thereof on or about February, 2021.

1           68. Pursuant to the Agreement, Defendants expressly warranted that the  
2 Machine “will be free from defects in material and workmanship and will produce high  
3 fin hollow copper tubing in accordance with the attached specification without error.”  
4 (See Exhibit A). This express warranty was to last twelve months starting from the date  
5 the Machine was set up and no later than 30 days from the date of shipment from the  
6 factory. *Id.*

7           69. As alleged above, Plaintiff realized the Machine suffered from defects,  
8 including but not limited to, the failure to run more than 2 parts without dimension  
9 changes, tube stoppages and being gouged, as well as the failure to produce tubes in  
10 accordance with the specifications outlined in the Agreement. Even when the Machine  
11 would produce tubing, it would be defective or faulty in the form of ruptures to the  
12 tubing itself.

13           70. Plaintiff gave reasonable notice by making Defendants aware of the  
14 various defects of the Machine mentioned above as early as July 15, 2021 via e-mail  
15 and proceeded to spend over two years working with and cooperating with Defendant to  
16 remedy the defects and satisfy the minimum standards outlined in the Agreement.

17           71. Defendants’ delivery of the defective Machine and failure to remedy the  
18 various defects that Plaintiff made Defendants aware of constituted a breach of the  
19 express warranties provided in the Agreement.

20           72. As a result of Defendants’ breach of Express Warranty, Plaintiff not only  
21 spent substantial time and effort, but also paid for installation of specialized cooling  
22 equipment, electrical power, and infrastructure to accommodate the Machine.  
23 Additionally, Plaintiff also lost many opportunities to meet the demand of the market  
24 which has caused harm to Plaintiff’s past and future earnings. Further, as a result of the  
25 loan agreement entered into with Bank of America to pay for the Machine, Plaintiff has  
26 accrued \$63,408.92 in interest that continues to accrue at the rate of 4.30%.

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73. As a result of Defendants' breach of express warranty, Plaintiff has been damaged in an amount to be determined at trial, and which exceeds, at a minimum, the sum of \$869,114.00.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants, as to all counts of its Complaint, as follows:

1. Actual, incidental, general, special and consequential damages in an amount according to proof at trial;
  2. Reasonable attorney's fees and costs of suit to the fullest extent allowed by law and/or contract;
  4. Pre and Post judgment interest on all amounts claimed as permitted by law;
- and
5. For such other and further relief as this Court may deem proper.

Dated: September 6, 2024

CALL & JENSEN  
A Professional Corporation  
Joshua G. Simon  
Sameer Hussain

By: /s/ Sameer Hussain  
Sameer Hussain

Attorneys for Plaintiff Dayco Industries, LLC

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues raised in the Complaint.

Dated: September 6, 2024

CALL & JENSEN  
A Professional Corporation  
Joshua G. Simon  
Sameer Hussain

By: /s/ Sameer Hussain  
Sameer Hussain

Attorneys for Plaintiff DAYCO INDUSTRIES,  
LLC